IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 395 OF 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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MANGUBEN WIDOW OF BHAGVANBHAI LAXMANBHAI BAMNIYA & ORS. - Appellant(s)

Versus

SHOKATALI ASARAFALI SAIYED & ANR. - Respondent(s)

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Appearance :

Shri P.C. Master for Shri H.B. Shah for Appellant(s) : 1 - 8.

None for Respondent No.1.

Ms. Maya Desai for Shri M.D. Pandya for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/06/2007

ORAL JUDGMENT

The claimants, being partly aggrieved with the award dated

24th July, 1986, made by the learned Member, Motor Accident Claims Tribunal (Auxiliary) at Himmatnagar in M.A.C.P. No. 338 of 1984, are before this Court seeking enhancement in the compensation amount. As the facts relating to the death and liability of the respondents are not in dispute, it is not necessary to refer to the facts in detail.

3. It would, however, be suffice to say that on 4th July, 1984, the deceased Bhagwanbhai Laxmanhai Bamania was going on a cycle; a bus bearing No. GRU-6337, driven by respondent No.1-Shokatali Asarafali Saiyed, came from the back side, dashed the deceased, which resulted into serious injuries to the deceased and consequent death. The claimants, i.e. mother of the deceased, widow of the deceased and six minor children, filed the claim petition claiming a sum of Rs.2 Lakhs. It was submitted by them that the deceased was working with the Public Works Department and while getting the salary of Rs.412.50, he was also earning a sum of Rs.300/- per month by vending milk and was also earning almost about Rs.10,000/- per year from his agricultural operations. They, accordingly, claimed the above referred sum.

3.1 The respondents appeared before the learned Tribunal and denied their total liability. The learned Tribunal, after recording the evidence and hearing the parties, held that Bus No.GRU-6337 was driven rashly and negligently, as a result of the accident the deceased died. The

learned Tribunal, however, held that the total income of the deceased could be assessed at Rs.500/- per month, out of which the deceased would be spending a sum of Rs.125/- per month towards his personal expenses leaving balance of Rs.375/- per month, out of which the mother of the deceased would get Rs.125/- per month or Rs.1,500/- per year and with the multiplier of ten, she would be entitled to a sum of Rs.15,000/-. According to the learned Tribunal below, the balance amount of Rs.250/- is to be distributed amongst the widow and minor children. The learned Tribunal, accordingly, awarded a sum of Rs.72,500/- in favour of the widow and the minor children. The claimants are before this Court with the submission that the amount awarded by the learned Tribunal below is less and deserves to be enhanced.

4. Shri P.C. Master, learned Counsel for the appellants-claimants, after taking me through the evidence, submitted that the learned Tribunal was absolutely unjustified in holding that the income of the deceased was Rs.500/- per month only and also had taken an unrealistic approach in holding that as the agricultural lands are still with the claimants, they can earn from the agricultural operations, that the learned Tribunal below was also unjustified in holding that if the cattle are still available with the family, then, they can earn money by vending milk. His submission is that the deceased was still to work for a

period of seventeen years and future prospects of the deceased could not be lost sight of. He submitted that the total income of the deceased could not be assessed below Rs.1,500/- per month and the dependency should have been assessed at Rs.1,200/- per month or Rs.14,400/- per year.

5. Ms. Maya Desai, learned Counsel for the respondent-Corporation, however, submits that in absence of the evidence regarding milk vending and agricultural operations, the claimants cannot be allowed to say that the income of the deceased was Rs.1,500/- per month. She also submits that in absence of any evidence that the deceased had better future prospects, the learned Tribunal was justified in assessing the income at Rs.500/- per month.

6. From the evidence available on the record, it would appear that the deceased was earning a sum of Rs.412.50 as the fixed salary. There is no evidence to contradict the statement of the claimants that the deceased was vending milk and was earning a sum of Rs.300/- per month. The learned Tribunal below, in the opinion of this Court, took an absolute unrealistic view in the matter by not appreciating that for the aged mother, minor children and the widow, it would not be possible to vend the milk and if they are required to employ somebody, then, they will have to share the income. In the same manner, the learned Tribunal also did not appreciate that after the death of the deceased, even if the

lands are available with the family, then, the aged persons cannot carry out agricultural operations and cannot employ some person to look after the agricultural operations, because that would lead to sharing of the income. Not only this, the learned Tribunal has also not taken into consideration the future prospects of the deceased. It would be trite to say that in a case where a person is working with the Government, promotions and increments are part of the system. The learned Tribunal below, in fact, took a hyper technical view of the matter and erred in holding that the income of the deceased could be assessed at Rs.500/- per month only. It also erred in holding that the deceased would be spending 25% of the total income on his own self when the family was consisting of nine persons. In a case like the present, neither the son nor the husband nor the father would be so cruel to spend the lion's share on his own self and leave only 75% for the eight members. The learned Tribunal also erred in not appreciating that if a sum of Rs.375/- is to be distributed in eight persons, each would get Rs.47/- per month, which would mean around Rs.1.55 per day. If such award is made in favour of the dependents of the claimants, then, not only it would be unrealistic , but, it would be too cruel to hold that the person, who belongs to mankind, can survive in the earning of Rs.1.55 per day.

7. In the opinion of this Court, the income of the deceased could have been assessed at Rs.1,000/-, which would include income

from milk vending, agricultural operations and future prospects. Out of this, the deceased can be held to have spent Rs.200/- on his own self leaving a sum of Rs.800/- per month for the family. The learned Tribunal has taken the dependency for the mother for ten years and for rest of the family, the multiplier applied is fifteen. As the mother is to live for some days, while rest of the family members would survive for a longer time, in my opinion, the multiplier of fourteen would be reasonable in the present set of circumstances. In the opinion of this Court, the claimants would be entitled to a sum of Rs.1,34,400/- in lump sum. I must also hold that the learned Tribunal was unjustified in giving 1/3rd to the widow mother and only 2/3rd to the other seven persons. As it has come on record that the widow mother of the deceased is not residing separately, it would be just and proper to award the compensation in lump sum and if the widow mother wants her independent share, then, she would be entitled to 1/8th of the total amount, as awarded by this Court. The enhanced amount shall carry interest at the rate of 9% per annum from the date of the claim petition till payment. If the payment is not made within a period of three months from the date of this judgement, then, the claimants would be entitled to interest at the rate of 12% per annum, that is, 3% over and above the interest awarded by this Court.

8. The appeal to the extent indicated above is allowed. No

costs.

[R.S.Garg, J.]

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